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In The
Supreme Court of the United States

OCTOBER TERM, 1954

No. 320

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Appellant,
VERSUS
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL.,
Appellees.

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,
VERSUS
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL.,
Appellees.

No. 322

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,
VERSUS
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL.,
Appellees.

APPEALS FROM THE SUPREME COURT OF OKLAHOMA

T. MURRAY ROBINSON,
LEON SHIPP,
FLOYD GREEN,
MAC Q. WILLIAMSON,
Oklahoma City, Oklahoma.

AUGUST, 1954.

KING LAW BRIEF CO., 222 N.W. THIRD, OKLAHOMA CITY — PHONE FO 5-2969

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STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM IN ACCORDANCE WITH THE PROVISIONS OF RULE 12, PARAGRAPH 3 OF THE SUPREME COURT OF THE UNITED STATES AS AMENDED

Come now the Appellees and file their statement in opposition to Appellants' statement as to jurisdiction and hereby move the Court to dismiss the appeal herein or to affirm the decision and judgment of the Supreme Court of the State of Oklahoma from which decision and judgment said appeal is taken.

I.

The questions presented by the three appeals are identical. They are appeals from a decision of the Supreme Court of Oklahoma affirming an order of the Corporation Commission fixing a minimum price for natural gas produced in the Guymon-Hugoton field of Oklahoma at the wellhead or on the lease from which it is produced, and prescribing a price equivalent thereto if sold off the lease or otherwise utilized, and further pro-

viding that if the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be equivalent to the wellhead price plus the reasonable cost of gathering, and if the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering the price for the residue gas must be sold to realize the prescribed wellhead price.

II.

The order of the Corporation Commission attached to appellants' statement as Appendix B discloses that the Commission specifically found that by a previous order it had fixed the minimum price of gas produced from the Guymon-Hugoton field at 7c per thousand cubic feet; that the order had been affirmed by both the Supreme Court of Oklahoma and the Supreme Court of the United States. The Commission further found that since the issuance of its previous order the general increase in commodity price and the use and value of gas had increased to the point that the production and sale of gas from the Guymon-Hugoton field at a price less than 9.8262c per thousand cubic feet would cause:

(a) Economic waste of a great natural resource, to-wit, natural gas;

(b) Physical waste of natural gas;

(c) Loss to royalty owners in said field;

(d) Loss to the State of Oklahoma of gross production taxes;

(e) Inequitable taking of natural gas from the common source of supply involved;

(f) Discrimination between producers in the field.

The Commission further found that only a small portion of gas produced in the field is actually sold or delivered at the wellhead and that in those instances where such sale and delivery does not occur at the wellhead it was necessary for the producer to determine whether or not it was realizing the equivalent of the minimum price fixed by the order; that much of the gas which is not sold at the wellhead is processed by the producer for the extraction of liquid hydrocarbons, and the residue then sold during or at the conclusion of gathering; that such processing during or at the conclusion of gathering constitutes the performance of a valuable service to the purchaser in that said processing conditions said gas for pipeline transmission and the residue from numerous wells is delivered at a central point eliminating the necessity for the purchaser to make substantial investments and incur substantial expenses in gathering the gas; that the liquid hydrocarbons extracted by said process are of value to the producer but fluctuate from time to time depending upon competitive conditions beyond his control; that on the average the value realized by the producer from the sale and use of

liquid hydrocarbons thus extracted does not exceed the cost of gathering and processing the gas, and that the producer to realize a price for such gas equivalent to and not less than 9.8262c per thousand cubic feet at the wellhead must receive for such processed gas a price of not less than 9.8262c per thousand cubic feet.

The Commission further found that a minimum price order can not be made fully effective and discrimination prevented without a means provided for determinnig the amount realized for gas by producers operating gathering and processing plants.

Pursuant thereto the Commission promulgated and issued the following order:

> "IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:
>
> "1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262c per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262c per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262c per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262c per thousand cubic feet.

"2. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of gathering contemplates that said residue gas will contain at least 950 British Thermal Heating Units per cubic foot of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal Heating Units than specified above the minimum price for such gas shall be in the proportion that the British Thermal Heating Units of such gas is to 950 per cubic feet.

"3. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit (60° F.).

"4. This order shall become and be effective the 1st day of August, 1952.

"DONE AND PERFORMED by the Corporation Commission of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 29th day of July, 1952."

The order of the Corporation Commission is in exact accordance with its previous order affirmed by this Court in *Cities Service Gas Company* v. *Peerless Oil & Gas Company et al.*, 340 U. S. 179, except that it changes the minimum price from 7c to 9.8262c and provides a yardstick for the establishment of a wellhead price in those instances where gas is sold away from the wellhead upon the conclusion of either gathering or gathering and processing.

In that case, Mr. Justice Clark, speaking for the Court, said:

"* * * The Oklahoma Supreme Court construed the 1915 Act to permit the general order setting a minimum price in the field. It further rules that economic waste was within the contemplation of the statute. Finally, with regard to state questions, it held that the orders did not violate the Oklahoma Constitution.

"The Oklahoma court also concluded that the statutes so construed and the orders made thereunder do not violate the Federal Constitution on the grounds relied on by Cities Service. We agree.

"The Due Process and Equal Protection issues raised by appellant are virtually without substance. It is now undeniable that a state may adopt reasonable regulations to prevent economic and physical waste of natural gas. * * *

"* * * It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce. (Citing cases.) The only requirements consistently recognized have been that the regulation not discriminate against or place an embargo on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions. * * *

"That a legitimate local interest is at stake in this case is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources. The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a state-wide interest in conservation. * * *

" * * * Presumably all consumers, domestic and industrial alike, want to obtain natural gas as cheaply as possible. On the other hand, groups connected with the production and transportation of competing fuels complain of the competition of cheap gas. Moreover, the wellhead price of gas is but a fraction of the price paid by domestic consumers at the burner-tip, so that the field price as herein set may have little or no effect on the domestic delivered price. * * *

"We hold that on this record the Oklahoma Corporation Commission issued valid orders, and that the decision of the court below should be affirmed."

If a question has been conclusively settled by the United States Supreme Court, it is no longer open for review.

Minneapolis, St. Paul & S. S. M. Ry. Co. v. *C. L. Merrick Co.*, 254 U. S. 376.

The necessity for the yardstick was recognized by this Court in *Phillips Petroleum Company* v. *State of Oklahoma*, 340 U. S. 190, a companion case to *Cities Service Gas Company* v. *Peerless Oil & Gas Company*, *supra*.

As reflected by the opinion of the Supreme Court of Oklahoma in that case, 220 P. 2d 279, subsequent to the effective date of the 7c minimum price order, Phillips Petroleum Company filed an application with the Corporation Commission to vacate or modify the price-fixing order in which it was shown that Phillips Petroleum Company owned oil and gas leases on several thousand acres of land in the Guymon-Hugoton field and had

several producing gas wells thereon and was then taking several million cubic feet of gas daily from such wells; that Phillips Petroleum Company sold no gas produced from the field in the State of Oklahoma but gathers the gas from its wells through its own gathering system to a central point in the State of Texas where it processes the gas and extracts therefrom natural gasoline and other hydrocarbons and sells the residue gas. Phillips Petroleum Company asked that the order be vacated as applied to it or that it be modified by a finding to the effect that its receipts for the sale of residue gas together with its receipts for the value of hydrocarbons extracted therefrom less its cost of gathering and processing equalled the wellhead price.

This Court in its opinion in *Phillips Petroleum Company* v. *State of Oklahoma, supra,* after reciting that Phillips was a producer in the field, with its own gathering system through which gas is transported to a central point and there processed for the extraction of gasoline and other hydrocarbons, then either utilizing or selling the same and then selling the residue to pipeline companies, noted that Phillips, after the entry of the order setting a minimum price on all natural gas taken from the field, moved that the Commission either vacate the order in so far as it was applicable to Phillips, or clarify the application of the order to gas not actually sold at the wellhead, and said:

"The Commission concluded that Phillips had no standing to complain of the general order since the company was currently complying with it by realizing on the average, from sale and utilization of by-products the sale of gas, the minimum price set."

and,

"Phillips argues that it is not a purchaser but merely a producer; that unlike the situation in Cities Service, the order as applied to it lacks any connection with correlative rights, the interest of the public, monopolistic practices or discrimination. The distinction is without a difference; the connection between realized price and conservation applies to all production in the field, whether owners purchase from others or not, and whether they own pipelines or not. In a field which constitutes a common reservoir of gas, the Commission must be able to regulate the operations of all producers or there is little point in regulating any.

"Phillips also relies heavily on the contention that the orders are unreasonably vague. In substance, this argument is nothing more than that the determination by an integrated company of proceeds realized from gas at the wellhead involves complicated problems in cost accounting. These problems are common to a host of valid regulations. There is nothing to indicate that Phillips will be penalized for reasonable and good faith efforts to solve them."

It therefore becomes clearly apparent that the Commission's yardstick for the purpose of establishing the equivalent of a wellhead price in those cases where gas was sold away from the wellhead after gathering or after gathering and processing is in accordance with this Court's veiws as expressed in that opinion.

The evidence upon which the yardstick portion of the order is based presents no Federal question.

The necessity and propriety of the Commission's yardstick for determining the equivalent of the wellhead price is adequately shown by the opinion of the Oklahoma Supreme Court attached as Appendix "A" to appellants' statement. It is therein shown that Phillips Petroleum Company introduced evidence before the Commission reasonably tending to show that it is primarily a producer in the Guymon-Hugoton field. That it sells no gas at the wellhead but transports the gas to a central point, removes liquid hydrocarbons and delivers the dry or residue gas to its contract purchasers. That the value of the liquid hydrocarbons, although fluctuating, equals the cost of gathering and processing and that in order to obtain the equivalent of 9.8262c per thousand cubic feet at the wellhead Phillips must receive 9.8262c for the residue gas after processing.

Thus the units of measurement to be employed in the yardstick or formula established by the Commission is a factual determination and presents no Federal question.

The precise question presented by this appeal was determined by this Court adversely to the contention of appellants in *Phillips Petroleum Company* v. *State*, *supra*, upon the appeal by the producer, that is, Phillips Petroleum Company. Appellants now desire a ruling

upon the same question in an appeal brought by the purchaser. The contracts involved are the same in each instance. The gas sold is the same in each instance. The rules of law involved should and must be the same in each instance.

The appeals do not present a substantial Federal question.

III.

Appellant contends the previous authorities were superseded by this Court's decisions in *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 74 S. Ct. Rep. 396 and *Phillips Petroleum Company* v. *State of Wisconsin*, 74 S. Ct. Rep. 794. Not so. In *Michigan-Wisconsin Pipe Line Company* v. *Calvert*, the Court was concerned with a state tax applied to an interstate natural gas pipe line company engaged in interstate commerce. In *Phillips Petroleum Company* v. *State of Wisconsin*, the Court was concerned with whether or not Phillips Petroleum Company is a natural gas company within the jurisdiction of the Federal Power Commission. In that opinion Mr. Justice Minton, speaking for the Court said:

> "There can be no dispute that the overriding congressional purpose was to plug the 'gap' in regulation of natural-gas companies resulting from judicial decisions prohibiting on federal constitutional grounds, state regulation of many of the interstate commerce aspects of the natural-gas business. A significant part of this gap was created by cases holding that 'the regulation of wholesale rates of gas and electrical energy moving in interstate commerce

is beyond the constitutional powers of the States.' *Interstate Natural Gas Co. v. Federal Power Commission, supra*, 331 U. S. at page 689, 67 S. Ct. at page 1487. The committee reports on the bill that became the Natural Gas Act specifically referred to two of these cases and to the necessity of federal regulation to occupy the hiatus created by them. Thus, we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission system.

"Petitioners cite our recent decisions in *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U. S. 179, 71 S. Ct. 215, 95 L. ed. 190, and *Phillips Petroleum Co. v. State of Oklahoma*, 340 U. S. 190, 71 S. Ct. 221, 95 L. ed. 204, as authority for the proposition that the states may regulate the sales in question here and, hence, that such sales are not within the gap which the Natural Gas Act was intended to fill. Those cases upheld as constitutional state minimum price orders, justified as conservation measures, applying to sales of natural gas in interstate commerce. But it is well settled that the gap referred to is that thought to exist at the time the Natural Gas Act was passed, and the jurisdiction of the Commission is not affected by subsequent decisions of this Court which have somewhat loosened the constitutional restrictions on state activities affecting interstate commerce, in the absence of conflicting federal regulation."

The emphasis on the word "minimum" is the Court's. The Federal Power Commission has in no wise attempted to regulate the production and gathering of natural gas. As seen by the decisions of this Court, *supra*, such is beyond the jurisdiction of the Federal Power Commission.

This Court's decisions support two valid types of regulations, each covering a separate field. First, state

regulation covering the production and gathering of natural gas. This may be done to effect conservation and to eliminate waste; fixing minimum prices is within this power left to the states.

Second, regulation of the transportation and purchase for resale of natural gas, including its sale price to consumers throughout the United States is within the province and jurisdiction of the Federal Power Commission. To say that the Federal Power Commission has jurisdiction to regulate is not to say that, in the absence of an exercise of such jurisdiction that all other jurisdiction is destroyed. Two such regulations may coexist if there is no conflict, if one does not impede or impair the other. Certainly a minimum price is a waste prevention measure. A maximum price is a consumer protection measure. If there is air space between the floor and the ceiling, neither pushes the other.

IV.

The order of the Commission does not violate the commerce clause of the Federal Constitution. The Commerce Clause does not prevent or restrict the state from regulating the production of gas to prevent waste and conserve the natural resources.

The Natural Gas Act was created for the purpose of filling a void in the regulations needed for public protection. Interstate pipe line companies were successful in

obtaining court decisions holding that certain of their activities, by reason of the Commerce Clause, were beyond state regulation, and since no federal regulation existed, they were free to act as thy chose. Mr. Justice Reed in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U. S. 498, makes these statements:

> "Without entering upon another review of its legislative history, suffice it to say that the Natural Gas Act did not envisage federal regulation of the entire natural-gas field to the limit of constitutional power. Rather it contemplated the exercise of federal power as specified in the Act, particularly in that interstate segment which the states were powerless to regulate because of the Commerce Clause of the Federal Constitution. The jurisdiction of the Federal Power Commission was to complement that of the state regulatory bodies."

And in the same opinion:

> "Before the Colorado Interstate decision, it was apparent that the value of producing facilities and the cost of gas bought by a natural-gas company from producers would be weighty factors in rate making whether a rate-base method or other method for fixing rates was used. Low valuation by the Commission of producing properties or low-cost allowance for purchased gas discourages exploration for gas or its sale in interstate commerce. Congress knew this necessary relationship between production and distribution but excluded the Commission from exercising any direct control or regulation over the actual production and gathering of natural gas."

And in answer to the argument that since natural gas is the life blood of a pipeline system, a company by disposing of its gas reserves, unhampered by Commission con-

trol, may render itself unable to continue service, and consequently abandon its facilities and services without the consent of the Commission, this Court in the same opinion said:

> "The argument begs the question. The section, like those above, covers only 'facilities subject to the jurisdiction of the Commission.'
>
> "To accept these arguments springing from power to allow interstate service, fix rates, and control abandonment would establish wise control by the Federal Power Commission over the production and gathering of gas. It would invite expansion of power into other phases of the forbidden area. It would be an assumption of powers specifically denied the Commission by the words of the Act as explained in the report and on the floor of both Houses of Congress.
>
> "The Legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states. This probably occurred because the state legislatures, in the interests of conservation, had delegated broad and elaborate power to their regulatory bodies over all aspects of producing gas. The Natural Gas Act was designed to supplement state power and to produce a harmonious and comprehensive regulation of the industry. Neither state nor federal regulatory body was to encroach upon the jurisdiction of the other. Congress enacted this Act after full consideration of the problems of production and distribution. It considered the state interests as well as the national interest. It had both producers and consumers in mind. Legislative adjustments were made to reconcile the conflicting views."

In *Interstate Natural Gas Co. v. Federal Power*

Commsision, 331 U. S. 682, Mr. Chief Justice Vinson said:

> "Thus the House Committee Report states: 'The bill takes no authority from State Commissions, and is so drawn as to complement and in no manner usurp State regulatory authority. * * *' Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the intention of Congress to give the States full freedom in these matters. Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory functions, the jurisdiction of the Federal Power Commission does not attach."

In *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591, Mr. Justice Douglas, speaking for the Court, said:

> "We do not mean to suggest that Congress was unmindful of the interests of the producing states in their natural gas supplies when it drafted the Natural Gas Act. As we have said, the Act does not intrude on the domain traditionally reserved for control by state commissions; and the Federal Power Commission was given no authority over 'the production or gathering of natural gas.' Sec. 1(b). In addition, Congress recognized the legitimate interests of the States in the conservation of natural gas. By Sec. 11 Congress instructed the Commission to make reports on compacts between two or more States dealing with the conservation, production and transportation of natural gas. The Commission

was also directed to recommend further legislation appropriate or necessary to carry out any proposed compact and 'to aid in the conservation of natural-gas resources within the United States and in the orderly, equitable, and economic production, transportation, and distribution of natural gas.' Sec. 11(a). Thus Congress was quite aware of the interests of the producing states in their natural gas supplies. But it left the protection of those interests to measures other than the maintenance of high rates to private companies."

Contrary to appellants' contention the Court of Appeals in *Wisconsin* v. *Federal Power Commission*, 205 F. 2d 710, did not categorically hold that a state may not regulate the price of natural gas. That opinion did hold that the Natural Gas Act was designed to close the gap of regulation that could not be reached by the states. Continuing the quote from the opinion as set forth on page 11 of the statement by Michigan-Wisconsin and Natural Gas Pipe Line Company, appellants, the Court said:

"It was plain long before the Natural Gas Act was passed that 'state regulatory power could not reach high-pressure trunk lines and sales for resale. This was the "gap" which Congress intended to close.' *Federal Power Commission* v. *East Ohio Gas Co.*, 1950, 338 U. S. 464, 472-473, 70 S. Ct. 266, 271, 94 L. ed. 268. As we have shown, the Supreme Court has determined that Congress closed it."

In the footnote to that opinion at page 710 it is said:

"Since Phillips' sales are made after the gas has been gathered into trunk lines *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 1950, 340 U. S. 179, 71

S. Ct. 215, 95 L. ed. 190, is irrelevant. That case upholds a state's power, in aid of conservation, to fix minimum prices for natural gas sold at the wellhead for interstate movement. Such sales are obviously made during the 'production and gathering' which Congress reserved to state control, and it 'is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce.' 340 U. S. at page 186, 71 S. Ct. at page 219. Moreover the Supreme Court has said: 'prior constitutional decisions, not what we have since decided or would decide today, form the measure of the gap which Congress intended to close by this Act.' *Federal Power Commission* v. *East Ohio Gas Co.*, 1950, 338 U. S. 464, 472, 70 S. Ct. 266, 270, 94 L. ed. 268."

And,

"Again on April 7, 1953, the Court said: 'Especially in the litigation arising under the Gas Act has this Court expressed the view that the limitations established on Commission jurisdiction therein were designed to coordinate precisely with those constitutionally imposed on the states.' *United States* v. *Public Utilities Commission of California*, 345 U. S. 295, 311, 73 S. Ct. 706, 716."

Appellants criticize this Court's reliance on *Parker* v. *Brown*, 317 U. S. 341 in the decision of *Cities Service Gas Company* v. *Peerless Oil & Gas Company*, 340 U. S. 179, and categorically state that the state regulation was upheld as not violating the Commerce Clause on the grounds that the state regulation occurred before the raisins were processed and packed preparatory to interstate sale and shipment. The statement does not fit the facts

set forth in *Parker* v. *Brown*. A portion of the raisins were sold for itnerstate commerce prior to the time they were processed and packed for sale. The rationale of that decision is to the effect that the court is not bound by a purely mechanical test as to when local activities are distinguished from interstate activities under the Commerce Clause. In the body of the opinion it is said:

> "* * * But courts are not confined to so mechanical a test. When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that commerce, the reconciliation of the power thus granted with that reserved to the state is to be attained by the accommodation of the competing demands of the state and national interests involved. * * *.
>
> "Such regulations by the state are to be sustained, not because they are 'indirect' rather than 'direct,' see *Di Santo* v. *Pennsylvania, supra;* cf. *Wickard* v. *Filburn, supra,* not because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations. But they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character and the practical difficulties involved, may never be adequately dealt with by Congress. * * * There may also be, as in the present case, local regulations whose effect upon the national commerce is such as not to conflict but to coincide with a policy which Congress has established with respect to it."

This Court in that opinion further pointed out that the

production and marketing of raisins in the State of California presented a problem local in character and urgently demanding state action for the economic protection of those engaged in one of its important industries. The Court also pointed out the grave economic conditions confronting the raisin growers during a certain period when the state had no regulation. This closely parallels the experiences of the State of Oklahoma in oil and gas production prior to effective regulation by the Corporation Commission of the State.

Appellants proceed upon the theory that the orders of the Corporation Commission were designed to regulate the price of gas paid by interstate carriers. Such a theory is a misconception of the record. The order clearly reflects that it is applicable only to the producers of gas. The penalties for its violation may be directed only to producers.

Foster Fountain Packing Co. v. *Haydel*, 278 U. S. 1, cited by appellants, is the Louisiana shrimp case. In that proceeding Louisiana by legislation attempted to prohibit the transportation of shrimp, from which the heads and gills had not been removed, from the state. No such prohibition against interstate transportation appears in either the Oklahoma statute or the order of the Corporation Commission enacted pursuant thereto.

Bailey v. *Alabama*, 219 U. S. 219, 244, cited by

appellants, must be a misprint. That case involves the validity of a statute concerning involuntary servitude.

South Carolina State Highway Dept. v. *Barnwell*, 303 U. S. 177, 185, cited as a footnote on page 14 of the Michigan-Wisconsin, Natural Gas Pipeline Company statement as to jurisdiction, was concerned with a statute which prohibited the use of state highways by motor trucks wider than 90 inches or exceeding weight loads of 20,000 pounds. The Commerce Clause was invoked, yet this Court sustained the validity of the act.

The Commerce Clause of the Constitution does not prevent or prohibit state regulations of its gas fields in so far as the regulations cover the productoin of gas therefrom and regulate the activities of producers within the state borders.

The State of Oklahoma cannot, under the guise of waste prevention, regulate the price of gas in Wisconsin. It follows that Oklahoma cannot, in the exercise of such power, fix the price of gas in Oklahoma so as to prevent its being sold for an excessive price in Wisconsin. The Federal Government, acting through the Federal Power Commission may. That is the gap which was closed by the Natural Gas Act. The closing of that gap did not operate to deprive the states right to validly regulate, and such a valid state regulation is not repugnant to the Commerce Clause of the Federal Constitution. It was not before the Natural Gas Act was passed. It is not now.

V.

There is nothing in the Commission's order that contravenes either the Due Process Clause or the Contract Clauses of the Constitution.

It should not require the citation of authority to disclose that all contracts of whatever nature are subject to a valid exercise of the police power. This applies to all state laws for the protection of the public and the conservation of the natural resources of the state. The authority is not limited to health, morals and safety.

In *Veix* v. *Sixth Ward Building & Loan Association of Newark, N. J.*, 310 U. S. 32, this Court said:

> "In *Home Building & Loan Association* v. *Blaisdell*, this Court considered the authority retained by the state over contracts 'to safeguard the vital interests of its people.' The rule that all contracts are made subject to this paramount authority was there reiterated. Such authority is not limited to health, morals and safety. It extends to economic needs as well."
>
> (Pages 39 and 40).

In 2 Cooley's Constitutional Limitations (8th ed.), Pages 1319-1320, it is said:

> " 'The Legislature may also regulate and restrict the use and enjoyment of landowners of the natural resources of the State, such as subterranean waters, gas, oil and timber, so as to protect them from waste and prevent the infringement of the rights of others. Such legislation does not infringe the constitutional inhibition against the taking of property without due process of law, denial of the equal protection of the laws, or taking property without just compensation'."

The statutes of the State of Oklahoma authorizing the Commission to fix the price of natural gas has been the law of Oklahoma since 1913. These statutes were in existence when the appellants herein built their pipelines and commenced business within the State of Oklahoma. The statutes were in existence at the time of the execution of the gas purchase contracts by each of the appellants with producers of natural gas in the Oklahoma portion of the Guymon-Hugoton field. The contracts so made were not only subject to the general police power of the State of Oklahoma; they were subject to the express authority of the Corporation Commission to fix the price of natural gas.

This Court has decided upon numerous occasions that the right to conduct a business or to pursue a calling may be conditioned.

Bratton v. *Chicago*, 260 U. S. 110;

Nebbia v. *New York*, 291 U. S. at 528;

Dent v. *West Virginia*, 129 U. S. 114;

Watson v. *Maryland*, 218 U. S. 173;

Crane v. *Johnson*, 242 U. S. 339;

Hayman v. *Galveston*, 273 U. S. 414;

Douglas v. *Noble*, 201 U. S. 165;

Graves v. *Minnesota*, 272 U. S. 425;

Brazee v. *Michigan*, 241 U. S. 340;

Merchants' Exchange v. *Missouri*, 248 U. S. 365;

LaTourette v. *McMaster*, 248 U. S. 465;

German Alliance Insurance Co. v. *Lewis*, 233 U. S. 339;

Gundling v. *Chicago*, 177 U. S. 183;

Roschen v. *Ward*, 279 U. S. 337;

Lehon v. *Atlanta*, 242 U. S. 53;

Chicago Board of Trade v. *Olsen*, 262 U. S. 1;

Hodge Co. v. *Cincinnati*, 284 U. S. 335.

In *Pierce Oil Corporation* v. *Phoenix Refining Co.*, 259 U. S. 125, 42 S. Ct. 440, this Court said:

> "When the largest discretion which the state had to impose terms upon this foreign corporation as a condition of permitting it to engage in wholly intrastate business is considered (*National Council U. A. M.* v. *State Council*, 203 U. S. 151, 163, 27 S. Ct. 46, 51 L. ed. 132; *Pullman Co.* v. *Kansas*, 216 U. S. 56, 66, 30 S. Ct. 232, 54 L. ed. 378; *Baltic Mining Co.* v. *Massachusetts*, 231 U. S. 68, 83, 34 S. Ct. 15, 58 L. ed. 127) the contention that this order, of a tribunal to the jurisdiction of which the company voluntarily submitted itself, made after notice and upon full hearing, deprives it of its property without due process of law must be pronounced futile to the point almost of being frivolous. 'By accepting the privilege it voluntarily consented to be bound by the conditions' attached to it (216 U. S. 56, 66, 30 S. Ct. 232, 54 L. ed. 378), and, while enjoying the benefits of that privilege, it will not be heard to complain that an order, plainly within the scope of statutes in effect when it entered the state, is unconstitutional."

We reiterate that the order complained of applies only to producers of natural gas operating within the

borders of the State of Oklahoma. It is designed to prevent the production and sale of natural gas at a price that would constitute economic waste of one of the state's most valuable natural resources. It prevents physical waste by promoting conservation and orderly development of the fringe areas of the gas field involved. A purchasing pipeline company cannot violate the order. No penalty whatsoever could be assessed against the purchaser. The Commission can enforce its orders only by contempt proceedings against the producer or by requiring him to cease production of gas until the order has been complied with.

Evidence of company operatoins and company investments in other states was obviously not pertinent for the purpose of determining the minimum price of gas produced from the field involved. The physical facts reflected that Phillips Petroleum Company sold no gas at the wellhead. The applicants before the Corporation Commission sought an order fixing the wellhead price of gas. The previous order of the Commission had fixed the price of gas with no method of determining the equivalent thereof where gas was sold at points other than the wellhead. Experience had shown that it was therefore necessary to take additional evidence to determine whether or not Phillips, as a producer of gas, had complied with the terms of the order. As pointed out by this Court in *Phillips Petroleum Company* v. *State*, *supra*, it was

necessary to determine from Phillips expense and operation the sums required to gather and process the gas and the sums received for the hydrocarbons extracted therefrom in order to properly determine whether or not Phillips had complied with the price-fixing order. Since this was done outside of the State of Oklahoma it was necessary to hear evidence of these costs, expenses and returns incurred and performed outside of the State of Oklahoma. Such matters often occur in public utility rate cases where a company is subject to the regulatory provisions of one state yet has investments and performs a portion of its operations in other states. The order complained of, by including a formula based upon the only evidence presented at the hearing, eliminates any such future controversies. It provides a manner of determining the equivalent of a minimum wellhead price where gas is sold at points other than the wellhead.

VI.

The appellants contend that the order is based upon the desires of royalty owners and producers for an increased price. They say:

> "The increase of minimum price from 7c to 9.8262c per m.c.f. is supported by nothing in the record other than pleas of royalty owners and producers to increase their receipts."

This statement is false and unfair to this Court.

We do not have the printed record before us. The

notice of appellants, however, designate for transmission to the Clerk of this Court a complete transcript of all the testimony and exhibits before the Corporation Commission of the State of Oklahoma. That record will show that the following evidence was introduced:

That the value of all fuel costs is related to its B.T.U. energy content.

That if the average cost of natural gas was 10c per thousand cubic feet, that energy acquired by its purchase would cost less than the energy obtained through any other competitive fuel.

That the energy in the form of crude oil at $2.55 per barrel would be the equivalent of paying $.43 per thousand cubic feet for natural gas.

That the energy cost of kerosene at 9.25c per gallon would be the equivalent to natural gas at a cost of $.69 per thousand cubic feet.

That any increase in the price of gas would tend to prevent waste and to conserve gas.

That the higher the price of gas the greater the amount of acreage which will be developed and the mineral owners along the edge of the field who otherwise would obtain nothing would acquire an income therefrom.

That the reservoir would thus yield additional quantities of gas to that which would be recovered if its price were cheaper.

That if edge wells are not drilled, part, but only part of the gas under such tracts will migrate to tracts owned by others on which wells have been drilled.

That since the date of the previous order of the Commission the price of crude oil had almost doubled.

That since the previous order of the Commission the price of coal had increased as to B.T.U. energy value from 13c to 18.4c.

That certain purchasers in Kansas were paying royalty owners 11c per thousand cubic feet at the wellhead from wells located in the same field as that involved in the case at bar .

That various companies purchasing gas from the Oklahoma portion of the field were paying prices varying from 7.27c to 9.95781c.

That there is discrimination as between mineral owners in the field.

That companies owning undivided interests in the same leases and producing gas from the same well were paying different prices to the mineral owners for the gas.

That since the Commission's previous order the cost of production had materially increased.

That since the Commission's previous order new gas purchasing contracts had been entered into between producers and purchasers for prices ranging up to 11c per thousand cubic feet at the wellhead.

That a price of 9.8262c at the wellhead is in excess of the price that could be obtained if the gas in the field were not otherwise committed.

That natural gas is an exhaustible natural resource.

That the interest of the State of Oklahoma and its citizens requires a price of gas which will produce the maximum revenue consistent with the policy of maintaining markets.

That a price of 9.8262c would not adversely affect this position in respect to markets.

That increased prices for gas has a general tendency to prevent waste and promote development.

The appellants herein offered no oral testimony.

Phillips Petroleum Company offered the following evidence:

That out of some 1,000 wells in the Guymon-Hugoton field gas is sold at the wellhead from only 141 wells.

That Phillips both produces and purchases gas at the wellhead in the field.

That none of the gas that Phillips produces is sold at the wellhead with the exception of one well.

That gas purchased by Phillips is dedicated to it by contract for the life of the field.

That gas produced and purchased by Phillips and gathered by Phillips is transported to its Sherman plant in Texas and processed under the terms of a contract with Michigan-Wisconsin.

That gas produced, gathered and transported by Phillips to its Hansford plant in Texas is sold under a contract therefor to Panhandle-Eastern.

That Phillips did not advocate an increase in the wellhead price of gas but that if it was to realize the equivalent of 9.8262c per thousand cubic feet at the wellhead, it would have to receive 9.8262c per thousand cubic feet for the sale of gas after it was gathered and processed.

Appellants offered no evidence upon this phase of the controversy.

VII.

Appellees contend that the record in this case discloses no substantial Federal question and that therefore this Court is without jurisdiction of this cause.

Appellees further contend that all of the pertinent questions presented by this appeal have been previously decided by this Court adversely to the contention of appellants.

It is therefore submitted that appellees' motion herein to dismiss the appeal or affirm the judgment of the Supreme Court of Oklahoma should be granted.

CONCLUSION

WHEREFORE, appellees pray that this Court refuse to note jurisdiction in this cause and that the appellees' motion to dismiss the appeal or affirm the judgment be granted.

Respectfully submitted,

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